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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,747	03/10/2004	Frank Daniel Long	1341-3	3427

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HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET, NY 11791

EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
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1617

MAIL DATE	DELIVERY MODE
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07/03/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/797,747	Applicant(s) LONG ET AL.	
	Examiner Gina C. Yu	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ONE(1) MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-124 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-124 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-12, 23-72, drawn to a composition comprising egg shell membrane, classified in class 424, subclass 581.
- II. Claims 13-22, 73-89, drawn to a composition comprising at least one active ingredient from a marine source, classified in class 424, subclass 547.
- III. Claims 90-99, drawn to a nutraceutical composition comprising egg shell membrane, classified in class 426, class 614.
- IV. Claims 100-109, 111-114, drawn to a method of improving skin condition, classified in class 424, subclass 401.
- V. Claims 107-110, 112-114, drawn to a method of treating tissue wounds, classified in class 514, subclass 925.
- VI. Claims 107, 115-120, drawn to a method of treating in an inflammatory disease, classified in class 514, subclass 825.
- VII. Claims 107, 115, 116, 121-124, drawn to a method of treating an inflammatory disease with a composition comprising at least one active ingredient from a marine source, classified in class 514, subclass 825 or class 424, subclass 547.

Inventions I and II are directed to distinct products. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as

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claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed are distinct because Invention I and II are materially different and mutually exclusive from each other because invention II contains at least one active ingredient derived from a marine source and invention I requires specific limitations such as weight amount and the types of hexosamine which are not required in invention II. The inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

Inventions I and III are directed to distinct products. In the instant case, the inventions as claimed are distinct because Invention I requires specific form of and cosmetic additives that are not required by invention III, and the invention III requires a oral or edible composition, which is not the case for invention I. The inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

Inventions I and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, method of improving skin conditions as claimed in Invention IV can be practiced with another materially different product, such as prior art anti-aging cosmetics, moisturizing therapeutic compositions, e.g.

Inventions I and V are related as product and process of use. In the instant case, method of treating tissue injury as claimed in Invention V can be practiced with another materially different product, such as prior art drugs for ulceration.

Inventions I and VI are related as product and process of use. In the instant case, method of treating inflammatory disease as claimed in Invention VI can be practiced with another materially different product, such as prior art drugs for arthritis.

Inventions I and VII are unrelated. In the instant case, the inventions are not capable of use together, have different designs, different modes of operation and effect, as invention I is a composition comprising egg shell membrane with specific limitations of the constituents; while invention VII is a method of treating inflammatory disease with a composition comprising at least one active ingredient from marine source, which is not a required component in invention I.

Inventions II and III are directed to distinct products. In the instant case, the inventions as claimed are distinct because invention II requires an active ingredient from a marine source and invention III is in an oral or edible form of the composition. The inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

Inventions II and IV are related as product and process of use. In the instant case, method of improving skin conditions as claimed in Invention IV can be practiced with another materially different product, such as prior art anti-aging cosmetics or moisturizing compositions.

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Inventions II and V are related as product and process of use. In the instant case, method of treating skin ulcer as claimed in Invention V can be practiced with another materially different product, such as prior art drugs for ulcerations.

Inventions II and VI are related as product and process of use. In the instant case, method of treating inflammatory disease as claimed in Invention VI can be practiced with another materially different product, such as prior art drugs for arthritis.

Inventions II and VII are unrelated. In the instant case, method of treating inflammatory disease as claimed in Invention VII can be practiced with another materially different product, such as prior art drugs for arthritis.

Inventions III and IV are related as product and process of use. In the instant case, method of improving skin conditions as claimed in Invention IV can be practiced with another materially different product, such as prior art topical anti-aging cosmetics or moisturizing compositions.

Inventions III and V are related as product and process of use. In the instant case, method of treating skin ulcer as claimed in Invention V can be practiced with another materially different product, such as prior art drugs for ulcerations.

Inventions III and VI are related as product and process of use. In the instant case, method of treating inflammatory diseases as claimed in Invention VII can be practiced with another materially different product, such as prior art drugs for arthritis.

Inventions III and VII are unrelated. In the instant case, method of treating inflammatory diseases as claimed in Invention VII can be practiced with another materially different product, such as prior art drugs for arthritis.

Inventions IV and V are directed to distinct methods. In the instant case, the inventions as claimed are distinct because the skin conditions to be treated by inventions IV and V do not overlap and the patient populations for those two skin conditions are different.

Inventions IV and VI are directed to distinct methods. In the instant case, the inventions as claimed are distinct because Invention the skin conditions to be treated by inventions IV and VI do not overlap and the patient populations for those two skin conditions are different.

Inventions IV and VII are directed to distinct methods. In the instant case, the inventions as claimed are distinct because Invention the skin conditions to be treated by inventions IV and VII do not overlap and the patient populations for those two skin conditions are different. Furthermore, invention VII uses a composition which contains an active ingredient from a marine source and is materially different from the composition used in IV.

Inventions V and VI are directed to distinct methods. In the instant case, the inventions as claimed are distinct because Invention the skin conditions to be treated by inventions IV and V do not overlap and the patient populations for those two skin conditions are different.

Inventions V and VII are directed to distinct methods. In the instant case, the inventions as claimed are distinct because Invention the skin conditions to be treated by inventions V and VII do not overlap and the patient populations for those two skin conditions are different. Furthermore, invention VII uses a composition which contains

an active ingredient from a marine source and is materially different from the composition used in V.

Inventions VI and VII are directed to distinct methods. In the instant case, the inventions as claimed are distinct invention VII uses a composition which contains an active ingredient from a marine source and is materially different from the composition used in VI.

Inventions IV and V are directed to related as distinct methods. In the instant case, the inventions as claimed are distinct because Invention the skin conditions to be treated by inventions IV and V do not overlap and the patient populations for those two skin conditions are different.

The inventions require a different field of search (see MPEP § 808.02), as inventions have acquired a separate status in the art due to their recognized divergent subject matter. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gina C. Yu

Patent Examiner